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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

LAMBDA LABS, INC.,

Plaintiff,

v.

LAMBDA, INC.,

Defendant.

Case No. 4:19-cv-04060-JST

~~PROPOSED~~ STIPULATED
PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 12.3, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 sets forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c).

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that it produces in disclosures or in responses to discovery as "CONFIDENTIAL," "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY."

2.5 Disclosure or Discovery Material: all items or information, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

1 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to
2 the litigation who (1) has been retained by a Party or its counsel to serve as an expert witness or as
3 a consultant in this action, (2) is not a past or current employee of a Party or of a Party's
4 competitor, and (3) at the time of retention, is not anticipated to become an employee of a Party or
5 of a Party's competitor.

6 2.7 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" Information or
7 Items: extremely sensitive "Confidential Information or Items," disclosure of which to another
8 Party or Non-Party would create a substantial risk of serious harm that could not be avoided by
9 less restrictive means. As used in the Protective Order and to designate Disclosure or Discovery
10 material, the terms "HIGHLY CONFIDENTIAL" and "HIGHLY CONFIDENTIAL –
11 ATTORNEYS' EYES ONLY" shall have the same meaning and may be used interchangeably.

12 2.8 House Counsel: attorneys who are employees of a party to this action who
13 provides legal advice to that party. House Counsel does not include Outside Counsel of Record or
14 any other outside counsel.

15 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
16 entity not named as a Party to this action.

17 2.10 Outside Counsel of Record: attorneys who are not employees of a party to this
18 action but are retained to represent or advise a party to this action and have appeared in this action
19 on behalf of that party or are affiliated with a law firm which has appeared on behalf of that party.

20 2.11 Party: any party to this action, including all of its officers, directors, employees,
21 consultants, retained experts, and Outside Counsel of Record (and their support staffs).

22 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery
23 Material in this action.

24 2.13 Professional Vendors: persons or entities that provide litigation support services
25 (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and
26 organizing, storing, or retrieving data in any form or medium) and their employees and
27 subcontractors.

1 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
 2 “CONFIDENTIAL,” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” Any of
 3 these designations are referred to as a “Confidentiality Designation.”

4 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
 5 Producing Party.

6 3. SCOPE

7 The protections conferred by this Stipulation and Order cover not only Protected Material
 8 (as defined above), but also (1) any information copied or extracted from Protected Material; (2)
 9 all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony,
 10 conversations, or presentations by Parties or their Counsel that might reveal Protected Material.
 11 However, the protections conferred by this Stipulation and Order do not cover the following
 12 information: (a) any information that is in the public domain at the time of disclosure to a
 13 Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a
 14 result of publication not involving a violation of this Order, including becoming part of the public
 15 record through trial or otherwise; and (b) any information known to the Receiving Party prior to
 16 the disclosure or obtained by the Receiving Party after the disclosure from a source who obtained
 17 the information lawfully and under no obligation of confidentiality to the Designating Party. Any
 18 use of Protected Material at trial shall be governed by a separate agreement or order. In the event
 19 that the production of source code containing trade secrets becomes necessary to this litigation, the
 20 parties will meet and confer in good faith to propose a reasonable modification to this order that
 21 accounts for the protection necessary to preserve the secret status of such source code.

22 4. DURATION

23 Even after final disposition of this litigation, the confidentiality obligations imposed by this
 24 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
 25 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims
 26 and defenses in this action, with or without prejudice; and (2) final judgment herein after the
 27 completion and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action,
 28 including the time limits for filing any motions or applications for extension of time pursuant to

1 applicable law.

2 5. DESIGNATING PROTECTED MATERIAL

3 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
 4 or Non-Party that designates information or items for protection under this Order must take care to
 5 limit any such designation to specific material that qualifies under the appropriate standards. To
 6 the extent it is practical to do so, the Designating Party must designate for protection only those
 7 parts of material, documents, items, or oral or written communications that qualify – so that other
 8 portions of the material, documents, items, or communications for which protection is not
 9 warranted are not swept unjustifiably within the ambit of this Order.

10 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
 11 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
 12 unnecessarily encumber or retard the case development process or to impose unnecessary
 13 expenses and burdens on other parties) expose the Designating Party to sanctions.

14 If it comes to a Designating Party's attention that information or items that it designated
 15 for protection do not qualify for protection, that Designating Party must promptly notify all other
 16 Parties that it is withdrawing the mistaken designation.

17 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order
 18 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
 19 Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so
 20 designated before the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic documents, but
 23 excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
 24 Party affix a legend containing the Confidentiality Designation to each page that contains
 25 protected material. If only a portion or portions of the material on a page qualifies for protection,
 26 the Producing Party also must clearly identify the protected portion(s) (e.g., by making
 27 appropriate markings in the margins) and must specify, for each portion, the level of protection
 28 being asserted.

1 A Party or Non-Party that makes original documents or materials available for inspection
2 need not designate them for protection until after the inspecting Party has indicated which
3 material it would like copied and produced. During the inspection and before the designation, all
4 of the material made available for inspection shall be deemed “HIGHLY CONFIDENTIAL–
5 ATTORNEYS’ EYES ONLY.” After the inspecting Party has identified the documents it wants
6 copied and produced, the Producing Party must determine which documents, or portions thereof,
7 qualify for protection under this Order. Then, before producing the specified documents, the
8 Producing Party must affix a legend containing the Confidentiality Designation to each page that
9 contains Protected Material. If only a portion or portions of the material on a page qualifies for
10 protection, the Producing Party also must clearly identify the protected portion(s) (e.g., by making
11 appropriate markings in the margins) and must specify, for each portion, the level of protection
12 being asserted.

13 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
14 Designating Party identify on the record, before the close of the deposition, hearing, or other
15 proceeding, all protected testimony and the Confidentiality Designation. The Designating Party
16 may identify on the record that the entire transcript be subject to a Confidentiality Designation
17 until thirty calendar days from the date the Designating Party receives the final transcript, at
18 which point the Designating Party must provide specific designations identifying which portion
19 or portions of the transcript are subject to a Confidentiality Designation.

20 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or
21 other proceeding to include Protected Material so that the other parties can ensure that only
22 authorized individuals who have signed the “Acknowledgment and Agreement to Be Bound”
23 (Exhibit A) are present at those proceedings. The use of a document as an exhibit at a deposition
24 shall not in any way affect its designation as “CONFIDENTIAL” or “HIGHLY
25 CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

26 Transcripts containing Protected Material shall have an obvious legend on the title page
27 that the transcript contains Protected Material, and the title page shall be followed by a list of all
28 pages (including line numbers as appropriate) that have been designated as Protected Material and

1 the level of protection being asserted by the Designating Party. The Designating Party shall
2 inform the court reporter of these requirements. Any transcript that is prepared before the
3 expiration of a 30-day period for designation shall be treated during that period as if it had been
4 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” in its entirety unless
5 otherwise agreed. After the expiration of that period, the transcript shall be treated only as
6 actually designated.

7 (c) for information produced in some form other than documentary and for any other
8 tangible items, that the Producing Party affix in a prominent place on the exterior of the container
9 or containers in which the information or item is stored a legend containing the Confidentiality
10 Designation. If only a portion or portions of the information or item warrant protection, the
11 Producing Party, to the extent practicable, shall identify the protected portion(s) and specify the
12 level of protection being asserted.

13 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
14 designate qualified information or items does not, standing alone, waive the Designating Party’s
15 right to secure protection under this Order for such material. Upon timely correction of a
16 designation, the Receiving Party must make reasonable efforts to assure that the material is treated
17 in accordance with the provisions of this Order.

18 6. ACCESS TO AND USE OF PROTECTED MATERIAL

19 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
20 confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality
21 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
22 burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to
23 challenge a confidentiality designation by electing not to mount a challenge promptly after the
24 original designation is disclosed.

25 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution
26 process by providing written notice of each designation it is challenging and describing the basis
27 for each challenge. To avoid ambiguity as to whether a challenge has been made, the written
28 notice must recite that the challenge to confidentiality is being made in accordance with this

1 specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in
2 good faith and must begin the process by conferring directly (in voice to voice dialogue; other
3 forms of communication are not sufficient) within 14 days of the date of service of notice. In
4 conferring, the Challenging Party must explain the basis for its belief that the confidentiality
5 designation was not proper and must give the Designating Party an opportunity to review the
6 designated material, to reconsider the circumstances, and, if no change in designation is offered, to
7 explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of
8 the challenge process only if it has engaged in this meet and confer process first or establishes that
9 the Designating Party is unwilling to participate in the meet and confer process in a timely
10 manner.

11 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court
12 intervention, the Designating Party shall file and serve a motion to retain confidentiality under
13 Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5, if applicable) within 21 days of
14 the initial notice of challenge or within 14 days of the parties agreeing that the meet and confer
15 process will not resolve their dispute, whichever is earlier. Each such motion must be
16 accompanied by a competent declaration affirming that the movant has complied with the meet
17 and confer requirements imposed in the preceding paragraph. Failure by the Designating Party to
18 make such a motion including the required declaration within 21 days (or 14 days, if applicable)
19 shall automatically waive the confidentiality designation for each challenged designation. In
20 addition, the Challenging Party may file a motion challenging a confidentiality designation at any
21 time if there is good cause for doing so, including a challenge to the designation of a deposition
22 transcript or any portions thereof. Any motion brought pursuant to this provision must be
23 accompanied by a competent declaration affirming that the movant has complied with the meet
24 and confer requirements imposed by the preceding paragraph.

25 The burden of persuasion in any such challenge proceeding shall be on the Designating
26 Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or impose
27 unnecessary expenses and burdens on other parties) may expose the Challenging Party to
28 sanctions. Unless the Designating Party has waived the confidentiality designation by failing to

1 file a motion to retain confidentiality as described above, all parties shall continue to afford the
 2 material in question the level of protection to which it is entitled under the Producing Party's
 3 designation until the court rules on the challenge.

4 7. ACCESS TO AND USE OF PROTECTED MATERIAL

5 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
 6 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
 7 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
 8 the categories of persons and under the conditions described in this Order. When the litigation has
 9 been terminated, a Receiving Party must comply with the provisions of section 13 below (FINAL
 10 DISPOSITION).

11 Protected Material must be stored and maintained by a Receiving Party at a location and in
 12 a secure manner that ensures that access is limited to the persons authorized under this Order.

13 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
 14 by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any
 15 information or item designated "CONFIDENTIAL" only to:

16 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees
 17 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information
 18 for this litigation. Outside Counsel of Record and employees of Outside Counsel of Record in this
 19 action hereby agree to abide by the terms of this Protective Order;

20 (b) House Counsel upon signing the "Acknowledgment and Agreement to Be Bound"
 21 (Exhibit A), who must maintain such information in a secure and safe area and exercise the same
 22 standard of due and proper care with respect to the storage, custody, use and/or dissemination of
 23 such information as is exercised by the recipient with respect to its own proprietary of highly
 24 sensitive information

25 (c) No more than two (2) officers, directors, and employees of the Receiving Party to
 26 whom disclosure is reasonably necessary for this litigation and who have signed the
 27 "Acknowledgment and Agreement to Be Bound" (Exhibit A) and whose names are disclosed to
 28 the Producing Party before access is given;

1 (d) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
2 reasonably necessary for this litigation and who have signed the “Acknowledgment and
3 Agreement to Be Bound” (Exhibit A);

4 (e) the court and its personnel;

5 (f) court reporters and their staff, professional jury or trial consultants, mock jurors, and
6 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
7 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

8 (g) Any other person with the prior written consent of the Producing Party. Pages of
9 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be
10 separately bound by the court reporter and may not be disclosed to anyone except as permitted
11 under this Stipulated Protective Order;

12 (h) Persons who appear on the face of the Protected Material as an author, addressee, or
13 recipient of the document.

14 (i) other persons only by written consent of the Designating Party or upon order of the
15 Court and on such conditions as may be agreed or ordered.

16 7.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
17 Information or Items. Unless otherwise ordered by the court or permitted in writing by the
18 Designating Party, a Receiving Party may disclose any information or item designated “HIGHLY
19 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” only to:

20 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees
21 of said Outside Counsel of Record to whom it is reasonably necessary to disclose the information
22 for this litigation. Outside Counsel of Record and employees of Outside Counsel of Record in this
23 action hereby agree to abide by the terms of this Protective Order;

24 (b) House Counsel upon signing the “Acknowledgment and Agreement to Be Bound”
25 (Exhibit A), who must maintain such information in a secure and safe area and exercise the same
26 standard of due and proper care with respect to the storage, custody, use and/or dissemination of
27 such information as is exercised by the recipient with respect to its own proprietary of highly
28 sensitive information;

(c) Experts of the Receiving Party (1) to whom disclosure is reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a), below, have been followed;

(d) the court and its personnel;

(e) court reporters and their staff, professional jury or trial consultants, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information.

(g) other persons only by written consent of the Designating Party or upon order of the Court and on such conditions as may be agreed or ordered.

7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information to Experts.

(a) Unless otherwise ordered by the court or agreed to in writing by the Designating Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3 first must provide written notice to the Designating Party at least five business days prior to the disclosure that (1) sets forth the full name of the Expert and the city and state of his or her primary residence, (2) attaches a copy of the Expert’s current resume, (3) identifies the Expert’s current employer(s), (4) identifies each person or entity from whom the Expert has received compensation or funding for work in his or her areas of expertise or to whom the expert has provided professional services, including in connection with a litigation, at any time during the preceding five years,¹ and (5) identifies (by name and number of the case, filing date, and location of court) any litigation in connection with which the Expert has offered expert testimony,

¹ If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

1 including through a declaration, report, or testimony at a deposition or trial, during the preceding
2 five years.

3 (b) A Party that makes a request and provides the information specified in the preceding
4 paragraph may disclose the subject Protected Material to the identified Expert unless, within five
5 business days of delivering the request, the Party receives a written objection from the
6 Designating Party. Any such objection must set forth in detail the grounds on which it is based.

7 (c) A Party that receives a timely written objection must meet and confer with the
8 Designating Party to try to resolve the matter by agreement within seven business days of the
9 written objection. If no agreement is reached, the Party seeking to prohibit the disclosure to the
10 Expert may bring the matter before the Court in a manner prescribed by the Court seeking
11 permission from the Court to do so.

12 In any such proceeding, the Party opposing disclosure to the Expert shall bear the burden
13 of proving that the risk of harm that the disclosure would entail (under the safeguards proposed)
14 outweighs the Receiving Party's need to disclose the Protected Material to its Expert.

15 If during the pendency of this matter, the Expert becomes employed or engaged by a
16 competitor to the Parties to this action, the Party retaining such Expert will promptly notify
17 Outside Counsel for the Producing Party of such employment or engagement. The Expert will
18 cease reviewing any Protected Material until all Parties in the action have been advised and either
19 all Parties consent to the Expert continuing to have access to any Protected Material in this matter
20 or as otherwise ordered by the Court.

21 (d) No Party will be deemed to have waived any privilege or protection from disclosure by
22 disclosing, pursuant to section 7.4, the name of an expert or consultant for whom Rule
23 26(a)(2)(B) disclosures are not made, and to whom the Party intends to show Protected Material.
24 No expert or consultant for whom Rule 26(2)(B) disclosures are not made disclosed pursuant to
25 section 7.4 shall be subject to a deposition in connection with this case or any related litigation
26 based solely on the fact that he or she was the subject of such disclosure. No expert or consultant
27 for whom Rule 26(a)(2)(B) disclosures are not made disclosed pursuant to section 7.4 shall be
28 subpoenaed for testimony or for documents in connection with any discovery or any hearing,

proceeding, or trial of this case or of any related litigation based solely on the fact that he or she was the subject of such disclosure.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as Protected Material, that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Stipulated Protective Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any Protected Material before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

(a) The terms of this Order are applicable to information produced by a Non-Party in this action and designated as with a Confidential Designation. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

(b) In the event that a Party is required, by a valid discovery request, to produce a Non-Party's confidential information in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential information, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the information requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of the Stipulated Protective Order in this litigation, the relevant discovery request(s), and a reasonably specific description of the information requested; and

(3) make the information requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this court within 14 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any information in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the court. Absent a court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this court of its Protected Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently

1 produced material is subject to a claim of privilege or other protection, the obligations of the
2 Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
3 provision is not intended to modify whatever procedure may be established in an e-discovery order
4 that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence
5 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a
6 communication or information covered by the attorney-client privilege or work product protection,
7 the parties may incorporate their agreement in the stipulated protective order submitted to the
8 court.

9 12. MISCELLANEOUS

10 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to
11 seek its modification by the court in the future.

12 12.2 Right to Assert Other Objections. By stipulating to the entry of this Protective
13 Order no Party waives any right it otherwise would have to object to disclosing or producing any
14 information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no
15 Party waives any right to object on any ground to use in evidence of any of the material covered
16 by this Protective Order.

17 12.3 Filing Protected Material. Without written permission from the Designating Party
18 or a court order secured after appropriate notice to all interested persons, a Party may not file in
19 the public record in this action any Protected Material. A Party that seeks to file under seal any
20 Protected Material must comply with Civil Local Rule 79-5. Protected Material may only be filed
21 under seal pursuant to a court order authorizing the sealing of the specific Protected Material at
22 issue. Pursuant to Civil Local Rule 79-5, a sealing order will issue only upon a request
23 establishing that the Protected Material at issue is privileged, protectable as a trade secret, or
24 otherwise entitled to protection under the law. If a Receiving Party's request to file Protected
25 Material under seal pursuant to Civil Local Rule 79-5(d) is denied by the court, then the Receiving
26 Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e)
27 unless otherwise instructed by the court or otherwise agreed to by the parties.
28

13. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, “all Protected Material” includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60 day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION). In addition, notwithstanding the preceding section, Counsel are entitled to retain any copies that exist on back up tapes or other media used for disaster recovery purposes, provided that such copies will not be accessed except upon notice to the Producing Party.

14. No Restriction on Advising Client:

Nothing in this Order shall be construed to prevent Counsel from advising their respective clients regarding this case, even if Counsel must rely on Protected Information in formulating such advice, as long as no Protected Information is disclosed in violation of this Order.

15. Limitation on Discovery from Experts:

Absent good cause, and consistent with Rule 26(b)(4) of the Federal Rules of Civil Procedure, drafts of expert reports and communications between an Expert (as defined in Section 2.5) and a Party’s Counsel are not discoverable except as provided in Federal Rule of Civil

1 Procedure 26(b)(4)(C). Reports and materials exempt from discovery under this section shall be
2 treated as attorney work product for the purposes of this case and Protective Order.

3 16. PRIVILEGE LOGS

4 The following documents need not be listed on a privilege log, and failure to do so shall
5 not constitute a waiver of any privilege or immunity: Privileged or work product documents
6 created on or after July 15, 2019; or privileged communications between a party and its outside
7 counsel that include no other parties such that the privilege would be broken.

8
9 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

10
11 DATED: 4/24/2020 /s/ Jennifer Lee Taylor

12
13 DATED: 4/24/2020 /s/ Karineh Khachatourian

14
15
16 ATTESTATION

17 I, Jennifer Lee Taylor, am the ECF user whose credentials were utilized in the electronic
18 filing of this document. In accordance with Civil Local Rule 5-1(i)(3), I hereby attest that Karineh
19 Khachatourian concurred in the filing of this document.

20 /s/ Jennifer Lee Taylor
21 Jennifer Lee Taylor

22
23 PURSUANT TO STIPULATION, IT IS SO ORDERED.

24
25 DATED: April 28, 2020

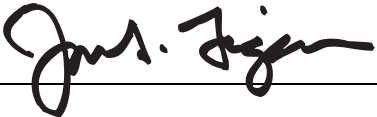
26 
United States District ~~Magistrate~~ Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
[print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Northern District of California on [date] in the case of Lambda Labs, Inc. v. Lambda Inc, Case No. 4:19-cv-04060-JST. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____